

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	1:18-CR-478
	)	
SAQUON DEVON DOZIER,	)	
	)	
Defendant.	)	

**ORDER**

The defendant, Saquon Devon Dozier, moves to suppress evidence seized during a frisk based on a lack of reasonable suspicion that he was armed and dangerous. Doc. 14. The Court heard evidence on May 6, 2019, and took the matter under advisement. Because the officer who performed the frisk lacked reasonable, particularized suspicion that Mr. Dozier was armed and dangerous, the motion will be granted.

**FINDINGS OF FACT**

For purposes of resolving the motion to suppress and based on its evaluation of the weight and credibility of the evidence, the Court makes the following findings of fact.

During the late afternoon on October 3, 2018, officers with the Durham County Sheriff's office were on duty near Liberty Street in Durham, North Carolina. There were several apartments nearby, including a large public housing complex. In the general area, there had been several recent shootings and complaints and arrests for illegal drug dealing. Approximately ten apartments in the public housing complex are located at 574 Liberty Street and are accessible from a common parking lot. There had been some recent complaints of drug dealing specific to this parking lot.

Lieutenant John Pinner was parked across the street from the entrance to the apartments at 574 Liberty Street. At approximately 5:30 p.m., he saw a gray Nissan turn into the parking lot, go out of sight for two minutes, and then exit the parking lot. Lt. Pinner could not see into the vehicle and did not know how many occupants were inside. Lt. Pinner suspected drug activity because of the “short stay,” and via a police radio channel, he told other officers who were nearby what he had seen. He also advised that the Nissan had turned onto Elizabeth Street.

Deputy Buchanan and Corporal Price heard Lt. Pinner’s radio transmission and saw the Nissan turning onto Elizabeth Street from Liberty Street. As they followed the Nissan, Deputy Buchanan ran the plate and learned that the DMV had issued a “pick up plate” order, indicating the registration had been revoked. The deputies then stopped the vehicle to investigate the potential registration issue. The vehicle stopped immediately. It was still daylight.

Corporal Price went up to the driver’s side and Deputy Buchanan went up to the passenger’s side. The windows were tinted. Upon request, the driver rolled down all the windows. There were three people in the car: the driver, a front seat passenger later identified as Nathan Harris, and a passenger in the rear seat on the driver’s side later identified as the defendant, Mr. Dozier. Mr. Harris had one arm in a sling. Mr. Dozier quickly and on his own initiative put his hands on the driver’s seat headrest where they could be seen by the officers.

Corporal Price talked to the driver about the tags and Deputy Buchanan asked Mr. Harris about his arm. Both were cooperative and neither appeared nervous. After

Corporal Price obtained information from the driver, he spoke to Mr. Dozier, who provided his name and birth date.

Deputy Buchanan and Corporal Price ran criminal histories on all three occupants. The driver had no record. Mr. Harris had an extensive criminal history. The officers learned that Mr. Dozier had been released from prison in May 2018 after serving sentences for robbery and firearms convictions and that he had been “validated” as a gang member by the state Department of Corrections. Mr. Dozier told officers he lived nearby on Eva Street and that the driver was taking him home so he could make his house arrest curfew. Mr. Dozier was cooperative, but he did somewhat nervously rub the back of the driver’s headrest with his thumbs and he appeared to be breathing quickly. The driver had not taken the quickest route from Liberty Street to Eva Street.

After about five minutes, Detective Valdivieso arrived on the scene, as did a K-9 officer. Deputy Buchanan asked Detective Valdivieso to remove Mr. Dozier from the vehicle in anticipation of a dog sniff. Detective Valdivieso was not aware of Mr. Dozier’s criminal record, of the gang validation, or of the electronic house arrest. He noticed Mr. Dozier’s hands on the headrest, but he did not observe any nervous or unusual behavior by Mr. Dozier and he was not told that Mr. Dozier had been behaving somewhat nervously. Detective Valdivieso asked Mr. Dozier to step out of the vehicle, which he did. Detective Valdivieso then moved Mr. Dozier to the back of the car and began to frisk him for weapons. Neither Deputy Buchanan nor Corporal Price had told Detective Valdivieso to frisk Mr. Dozier. He frisked Mr. Dozier “as a safety precaution”

based on “the area that we were working in.” Detective Valdivieso quickly located a firearm in Mr. Dozier’s waistband and then placed Mr. Dozier in handcuffs.

When Mr. Harris got out of the car, Deputy Buchanan saw a blunt-type cigar on the passenger seat. The driver, who had been assisting Mr. Harris into his wheelchair, grabbed the blunt and handed it to Deputy Buchanan, who identified the blunt by smell as containing marijuana. Neither Mr. Harris nor the driver were frisked or searched.

### **ANALYSIS AND CONCLUSIONS**

The officers had probable cause to believe that vehicle registration laws had been violated, and the stop of the Nissan to investigate the problem with the vehicle’s tags was reasonable and did not violate the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 810 (1996) (“[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”). It was not an unreasonable detention for Detective Valdivieso to direct Mr. Dozier to step out of the lawfully-stopped vehicle during the traffic stop. *See Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (“[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”).

However, “[t]o justify a patdown of the driver or a passenger during a traffic stop, . . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.” *Arizona v. Johnson*, 555 U.S. 323, 327 (2009). Because a pat-down is “substantially more intrusive than an order to exit a vehicle or to open its doors, . . . an officer must have justification for a frisk or a ‘pat-down’ beyond the mere justification for the traffic stop.” *United States v. Sakyi*, 160 F.3d 164, 169 (4th Cir

1998). The sole issue here is whether the frisk of Mr. Dozier was based on a reasonable suspicion that he was armed and dangerous.

It has long been recognized that “[a]n individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime,” *Illinois v. Wardlow*, 528 U.S. 119, 124, (2000); accord *United States v. Foster*, 824 F.3d 84, 92 (4th Cir. 2016), and the government acknowledges that in routine traffic stops in high crime areas, officers cannot frisk occupants of a car without other indications that an occupant is armed and dangerous. See Doc. 26. As the Fourth Circuit recently repeated, there must be a particularized suspicion before a frisk is appropriate, and factors that would apply to anyone in the same vicinity do little to provide “particularized” suspicion. *United States v. Massenburg*, 654 F.3d 480, 485, 488 (4th Cir. 2011); see also *United States v. Dunham*, 161 F. Supp. 2d 609, 615 (D. Md. 2001) (“Certainly, the residents and motorists present in a high crime area . . . do not for that reason alone relinquish their constitutional rights to be free from unreasonable searches.”).

Here, Detective Valdivieso forthrightly acknowledged that he frisked Mr. Dozier because of the neighborhood, and he possessed no other information tending to indicate or to give rise to an objectively reasonable and particularized suspicion that Mr. Dozier was armed and dangerous. See *United States v. Powell*, 666 F.3d 180, 185–86 (4th Cir. 2011) (noting that the reasonable suspicion standard is an objective one). He noticed nothing unusual about Mr. Dozier’s behavior and knew of nothing specific to Mr. Dozier

that made him suspect Mr. Dozier was armed and dangerous. It was daylight and there were four officers present to deal with a vehicle stop involving three persons.

The fact that Deputy Buchanan or Corporal Price may have had some reason to suspect that Mr. Dozier was armed and dangerous does not save the frisk from being an unreasonable search.<sup>1</sup> As the government acknowledges, Doc. 26, the “collective knowledge doctrine” does not apply here, as neither Deputy Buchanan nor Corporal Price instructed Detective Valdivieso to frisk or patdown Mr. Dozier—they simply told him to remove Mr. Dozier from the vehicle in anticipation of a dog sniff. *See Massenburg*, 654 F.3d at 493–95 (“[T]he collective-knowledge doctrine simply directs us to substitute the knowledge of the *instructing officer or officers* for the knowledge of the *acting officer*; it does not permit us to aggregate bits and pieces of information from among myriad officers, nor does it apply outside the context of communicated alerts or instructions.” (emphasis in original)).

## CONCLUSION

Detective Valdivieso lacked reasonable, particularized suspicion that Mr. Dozier was armed and dangerous at the time he decided to and did frisk Mr. Dozier for weapons. Detective Valdivieso’s frisk of Mr. Dozier was therefore an unlawful search in violation of the Fourth Amendment.


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<sup>1</sup> The Court need not decide whether Mr. Dozier’s criminal record, his presence in a high-crime neighborhood, his “validation” as a gang member by state corrections officials, and his nervous behaviors would be sufficient to give rise to a reasonable, particularized suspicion that he was armed and dangerous. *Cf. Powell*, 666 F.3d at 188–89 (finding possible prior convictions for armed robbery and other minimally suspicious circumstances were insufficient to support a reasonable suspicion that the defendant might be armed and dangerous).

It is **ORDERED** that the defendant's first motion to suppress, Doc. 14, is **GRANTED** as to the firearm located during the frisk of Mr. Dozier.

It is further **ORDERED** that counsel shall promptly consult with each other and the Court's case manager to schedule a date for a status conference.

This the 10th day of June, 2019.

  
UNITED STATES DISTRICT JUDGE